

### § 4001.3

age specified in the plan or the age at which an unreduced benefit is first payable.

*Voluntary employee contributions* means amounts contributed by an employee to a plan, pursuant to the provisions of the plan, that are not mandatory employee contributions.

[61 FR 34010, July 1, 1996, as amended at 61 FR 63989, Dec. 2, 1996; 62 FR 35342, July 1, 1997; 62 FR 60428, Nov. 7, 1997; 62 FR 67728, Dec. 30, 1997; 73 FR 79635, Dec. 30, 2008; 74 FR 11029, Mar. 16, 2009; 74 FR 27081, June 8, 2009; 74 FR 59095, Nov. 17, 2009]

### § 4001.3 Trades or businesses under common control; controlled groups.

For purposes of title IV of ERISA:

(a)(1) The PBGC will determine that trades and businesses (whether or not incorporated) are under common control if they are “two or more trades or businesses under common control”, as defined in regulations prescribed under section 414(c) of the Code.

(2) The PBGC will determine that all employees of trades or businesses (whether or not incorporated) which are under common control shall be treated as employed by a single employer, and all such trades and businesses shall be treated as a single employer.

(3) An individual who owns the entire interest in an unincorporated trade or business is treated as his own employer, and a partnership is treated as the employer of each partner who is an employee within the meaning of section 401(c)(1) of the Code.

(b) In the case of a single-employer plan:

(1) In connection with any person, a controlled group consists of that person and all other persons under common control with such person.

(2) Persons are under common control if they are members of a “controlled group of corporations”, as defined in regulations prescribed under section 414(b) of the Code, or if they are “two or more trades or businesses under common control”, as defined in regulations prescribed under section 414(c) of the Code.

### 29 CFR Ch. XL (7–1–10 Edition)

## PART 4002—BYLAWS OF THE PENSION BENEFIT GUARANTY CORPORATION

Sec.

4002.1 Name.

4002.2 Offices.

4002.3 Board of Directors, Chair, and Representatives of Board Members.

4002.4 Quorum.

4002.5 Meetings.

4002.6 Place of meetings; use of conference call communications equipment.

4002.7 Voting without a meeting.

4002.8 Conflicts of interest.

4002.9 Director of the Corporation and Senior Officers.

4002.10 Emergency Procedures.

4002.11 Seal.

4002.12 Amendments.

AUTHORITY: 29 U.S.C. 1302(b)(3), 1302(f).

SOURCE: 73 FR 29985, May 23, 2008, unless otherwise noted.

### § 4002.1 Name.

The name of the Corporation is the Pension Benefit Guaranty Corporation.

### § 4002.2 Offices.

The principal office of the Corporation is in the Metropolitan area of the City of Washington, District of Columbia. The Corporation may have additional offices at such other places as the Board of Directors may deem necessary or desirable to the conduct of its business.

### § 4002.3 Board of Directors, Chair, and Representatives of Board Members.

(a)(1) The Corporation is governed by a Board of Directors which is composed of the Secretary of Labor, the Secretary of the Treasury, and the Secretary of Commerce. Members of the Board shall serve without compensation, but shall be reimbursed by the Corporation for travel, subsistence, and other necessary expenses incurred in the performance of their duties as Members of the Board. A person at the time of a meeting of the Board of Directors who is serving in an acting capacity as Secretary of Labor, Secretary of the Treasury, or Secretary of Commerce shall serve as a Member of the Board of Directors with the same authority and effect as the designated Secretary.

## Pension Benefit Guaranty Corporation

## § 4002.3

(2) The Secretary of Labor shall be the Chair of the Board of Directors and shall call and preside over all Board meetings, and shall, on behalf of the Board, review and approve the Corporation's budget. The Inspector General of the Corporation shall report to the Board through the Chair.

(3) The Board of Directors is responsible for establishing and overseeing the policies of the Corporation. The Board may delegate powers to the Director of the Corporation except that the following powers of the Board may not be delegated to the Director of the Corporation:

(i) Voting on an amendment to these bylaws;

(ii) Approval of the Annual Management Report (AMR), which includes the annual financial statements, management's discussion and analysis, annual performance report, and reports of the independent auditor;

(iii) Approval of the Annual Report, which includes the AMR, the Chairman's message, and certain statutory reporting requirements;

(iv) Approval of the Corporation's Investment Policy Statement;

(v) Approval of the issuance of any notes or debt instruments to the Secretary of the Treasury under Section 4005(c) of ERISA;

(vi) Approval of all final nonprocedural regulations prior to publication in the FEDERAL REGISTER, except for amendments that establish new interest rates and factors under Parts 4044 (Appendices C and D) and 4281 of this chapter, which may be approved by the Director of the Corporation;

(vii) Approval of all reports or recommendations to the Congress required by Title IV of ERISA;

(viii) Approval of any policy matter that would have a significant impact on the pension insurance program or its stakeholders; and

(ix) Review of reports from the Corporation's Inspector General that the Inspector General deems appropriate to deliver to the Board.

(4) The Board shall review the Corporation's Investment Policy Statement at least every two years and approve the Investment Policy Statement at least every four years.

(b)(1) Each Board Member shall designate in writing an official, not below the level of Assistant Secretary, to serve as the Board Member's Representative. Such designation shall be effective until revoked or until a date or event specified therein. A Board Representative may act for all purposes under these bylaws, except that an action of a Board Representative on a Board Member's behalf with respect to the powers described in paragraph (a)(3)(i) through (v) of this section, shall be valid only upon ratification in writing by the Board Member. Any Board Representative may refer for Board action any matter under consideration by the Board Representatives.

(2) A Board Member may designate in writing an official, not below the level of Assistant Secretary, to serve as the Board Member's Alternate Representative at a meeting. An Alternate Representative may act for all purposes at that meeting, except that the Alternate Representative's actions shall be valid only upon ratification in writing by either the Board Member or the Board Representative. Any action of the Alternate Representative involving the powers described in paragraph (a)(3)(i) through (v) of this section or any matter that has been referred to the Board under paragraph (b)(1) of this section must be ratified in writing by the Board Member.

(3) For purposes of this section, ratification shall include approval of the minutes of the meeting of the Board of Directors.

(c) Final procedural regulations and all proposed regulations shall be approved by the Director of the Corporation prior to publication in the FEDERAL REGISTER; however, all final procedural regulations and all proposed regulations shall first be reviewed for comment by each Board Representative, except for amendments that establish new interest rates and factors under Parts 4044 (Appendices C and D) and 4281 of this chapter. A Board Representative may, within 21 days of receiving a final procedural regulation or proposed regulation for review, request that it be referred to the Board Representatives for approval.

#### **§ 4002.4**

##### **§ 4002.4 Quorum.**

A majority of the Board Members shall constitute a quorum for the transaction of business. Any act of a majority of the Members present at any meeting at which there is a quorum shall be the act of the Board.

##### **§ 4002.5 Meetings.**

Regular meetings of the Board of Directors shall be held as often as required to provide appropriate oversight and guidance to the Corporation and at such times as the Chair shall select. Special meetings of the Board of Directors shall be called by the Chair on the request of any other Board Member. Reasonable notice of any meetings shall be given to each Board Member. The General Counsel of the Corporation shall serve as Secretary to the Board of Directors and keep its minutes. As soon as practicable after each meeting, a draft of the minutes of such meeting shall be distributed to each Member of the Board for approval.

##### **§ 4002.6 Place of meetings; use of conference call communications equipment.**

Meetings of the Board of Directors shall be held at the principal office of the Corporation unless otherwise determined by the Board of Directors or the Chair. Any Member may participate in a meeting of the Board of Directors through the use of conference call telephone or similar communications equipment, by means of which all persons participating in the meeting can speak to and hear each other. Any Board Member so participating in a meeting shall be deemed present for all purposes. Actions taken by the Board of Directors at meetings conducted through the use of such equipment, including the votes of each Member, shall be recorded in the usual manner in the minutes of the meetings of the Board of Directors.

##### **§ 4002.7 Voting without a meeting.**

A resolution of the Board of Directors signed by each of the Board Members or each of the Board Representatives shall have the same effect as if agreed to at a meeting and shall be kept in the Corporate Minutes Book. A resolution for an action taken on any

#### **29 CFR Ch. XL (7–1–10 Edition)**

matter for which a Board Member has been disqualified under § 4002.8 may be signed by the Board Representative of the disqualified Board Member.

##### **§ 4002.8 Conflict of interest.**

Any Board Member may disqualify himself or herself from participation in a Board action on any matter if the Board Member may have or may appear to have a conflict of interest. The Board Member shall notify the other Board Members of a disqualification. The disqualified Member's Board Representative, acting independently of that Member, may vote on the matter in the Member's place. The disqualified Board Member need not and may not ratify any action taken on the matter giving rise to his or her disqualification.

##### **§ 4002.9 Director of the Corporation and Senior Officers.**

(a) *Director of the Corporation.* The Corporation shall be administered by a Director appointed by the President with the advice and consent of the Senate. Subject to policies established by the Board, the Director shall have responsibility for the Corporation's management, including its personnel, organization and budget practices, and shall carry out the Corporation's functions under Title IV of ERISA. The Director shall submit the Corporation's budget to the Chair of the Board for review and approval.

(b) There shall be the following senior officers of the Corporation, reporting directly to the Director:

- (1) Deputy Directors for Policy and Operations, who shall be first and second assistant, respectively;
- (2) General Counsel, who shall serve as Secretary to the Board;
- (3) Chief Financial Officer;
- (4) Chief Information Officer;
- (5) Chief Management Officer;
- (6) Chief Operating Officer; and
- (7) Chief Insurance Program Officer.

(c) Subject to prior approval of the Board, the Director may establish such additional or other senior officers as necessary. Before making an appointment to a senior officer position, the Director shall consult with the Board.

## **Pension Benefit Guaranty Corporation**

## **§ 4003.1**

### **§ 4002.10 Emergency procedures.**

(a) An emergency exists if a quorum of the Corporation's Board cannot readily be assembled or act through written contact because of the declaration of a government-wide emergency. These emergency procedures shall remain in effect during the emergency and upon the termination of the emergency shall cease to be operative unless and until another emergency occurs. The emergency procedures shall operate in conjunction with the PBGC Continuity of Operations Plan ("COOP Plan") of the current year, and any government-wide COOP protocols in effect.

(b) During an emergency, the business of the PBGC shall continue to be managed in accordance with its COOP Plan. The functions of the Board of Directors will be carried out by those Members of the Board of Directors in office at the time the emergency arises, or by persons designated by the agencies' COOP plans to act in place of the Board Members, who are available to act during the emergency. If no such persons are available, then the authority of the Board shall be transferred to the Board Representatives who are available. If no Board Representatives are available, then the Director of the Corporation shall perform essential Board functions.

(c) During an emergency, meetings of the Board may be called by any available Member of the Board. The notice thereof shall specify the time and place of the meeting. To the extent possible, notice shall be given in accordance with these bylaws. Notice shall be given to those Board Members whom it is feasible to reach at the time of the emergency, and notice may be given at a time less than 24 hours before the meeting if deemed necessary by the person giving notice.

### **§ 4002.11 Seal.**

The seal of the Corporation shall be in such form as may be approved from time to time by the Board.

### **§ 4002.12 Amendments.**

These bylaws may be amended or new bylaws adopted by unanimous vote of the Board.

## **PART 4003—RULES FOR ADMINISTRATIVE REVIEW OF AGENCY DECISIONS**

### **Subpart A—General Provisions**

Sec.

4003.1 Purpose and scope.

4003.2 Definitions.

4003.3 PBGC assistance in obtaining information.

4003.4 Extension of time.

4003.5 Non-timely request for review.

4003.6 Representation.

4003.7 Exhaustion of administrative remedies.

4003.8 Request for confidential treatment.

4003.9 Method and date of filing.

4003.10 Computation of time.

### **Subpart B—Initial Determinations**

4003.21 Form and contents of initial determinations.

4003.22 Effective date of determinations.

### **Subpart C—Reconsideration of Initial Determinations**

4003.31 Who may request reconsideration.

4003.32 When to request reconsideration.

4003.33 Where to submit request for reconsideration.

4003.34 Form and contents of request for reconsideration.

4003.35 Final decision on request for reconsideration.

### **Subpart D—Administrative Appeals**

4003.51 Who may appeal or participate in appeals.

4003.52 When to file.

4003.53 Where to file.

4003.54 Contents of appeal.

4003.55 Opportunity to appear and to present witnesses.

4003.56 Consolidation of appeals.

4003.57 Appeals affecting third parties.

4003.58 Powers of the Appeals Board.

4003.59 Decision by the Appeals Board.

4003.60 Referral of appeal to the Director.

4003.61 Action by a single Appeals Board member.

AUTHORITY: 29 U.S.C. 1302(b)(3).

SOURCE: 61 FR 34012, July 1, 1996, unless otherwise noted.

### **Subpart A—General Provisions**

#### **§ 4003.1 Purpose and scope.**

(a) *Purpose.* This part sets forth the rules governing the issuance of all initial determinations by the PBGC on